

REMARKS

The present application is directed to an apparatus and method for processing a fluid sample. Claims 1-17 and 25-47 are currently pending. Claims 18-24 have been withdrawn as directed to a non-elected invention. Claims 1, 25, 36 and 40 have been amended. Support for the amendments can be found in, e.g., paragraphs 14-15 and Figures 1-3 of the specification (paragraph numbers refer to the Patent Application Publication No. 2006/0281094). No new matter has been added.

Rejections Under 35 U.S.C. § 102

Claims 1-6, 11, 12, 15, 17, 25-33 and 35-45 are rejected under 35 U.S.C. § 102(b) as being anticipated by Clark *et al.* (WO 01/11374, “Clark”). Applicants respectfully traverse in view of the above amendments and following remarks.

Clark discloses a test cartridge having a reagent carousel with a sample processing element for holding a swab and reagent wells. Each reagent well is sealed and has a hard plastic piston inside. The piston is actuated by a push rod which causes the piston to pierce a seal in the bottom of the well, forcing the reagent to flow out of the well into an optically active test surface below the carousel. Thus, all the reactions appear to occur in the optically active test surface, with the pistons being used to displace the desired reagent from the reagent wells into the test surface.

In contrast, the apparatus of the present application describe a functional component that sits on a platform and can be picked up and removed by an arm and then moved from chamber to chamber on the platform before it is returned to its position on the platform. This therefore has the advantage that it enables the analyte to be moved from chamber to chamber, or allows one or more reagents to be moved into the sample chambers, thereby subjecting the sample to a series of chemical manipulations. Moreover, because the processing steps can take place within the chambers on the platform (rather than in the active test surface below the carousel in Clark), there is ease of access for processing apparatus such as

heaters/sonicators/etc. The mode of action of Clark thus substantially differs from that of the claimed invention.

Claim 1 has been amended to clarify that the functional component is able to move a sample, analyte or reagent from one chamber **on the platform** to another **chamber on the platform**. This is not the case in Clark, where the pistons enable flow of reagent in a reaction well in the carousel to an active test surface below the carousel. Moreover, as explained above, having both first and second chambers located on the platform enables greater flexibility.

Claim 25 has been amended to state that the functional component can be held on the platform **such that it can be removed from and replaced onto the platform**. The presently claimed functional component can thus move freely, allowing for greater flexibility, in contrast to the piston of Clark, which is trapped within the well.

Claim 36 has been amended to included the limitation that the hold is **for engagement with a feature of a functional component to thereby support the functional component**. In Clark, the piston is housed within a well and supported on the upper seal of the well by adhesion—the piston is not supported by engagement with the hole.

Claim 40 has been amended to include the limitation that the functional component is releasably held on the platform **so that it can be removed from and replaced onto the platform**. This distinguishes the presently claimed functional component from the piston of Clark, which is trapped within a reagent well and cannot move out of that well.

For at least the reasons discussed above, and possibly for other reasons, applicants submit that independent Claims 1, 25, 36 and 40, as amended, are not anticipated by Clark and applicants request that the rejection of these claims under 35 U.S.C. § 102(b) be withdrawn.

Claims 2-6, 11, 12, 15, 17, 26-33, 35, 37-39 and 41-45 are dependent on Claims 1, 25, 36 or 40. Applicants thus submit that these claims are allowable as dependent on allowable independent claims and request that their rejection be withdrawn.

Rejections Under 35 U.S.C. § 103

Claims 1, 5-11, 13, 15, 16, 25, 32, 34, 40, 46 and 47 are rejected under 35 U.S.C. § 103(a) as obvious in view of Clark and Smith *et al.* (U.S. 6,027,945) ("Smith"). Claims 1 and 14 are rejected under 35 U.S.C. § 103(a) as obvious in view of Clark and Lee (WO 98/24548). Applicants respectfully traverse in view of the above amendments and remarks.

Initially, applicants note that in the rejections under 35 U.S.C. § 103(a) the Examiner appears to rely solely on the rejection of Claims 1, 25 and 40 in view of Clark as described in the rejection under 35 U.S.C. § 102(b). The Examiner does not provide a separate explanation for the rejection of these independent claims under 35 U.S.C. § 103(a) and does not assert that these claims are rendered obvious in view of the teachings of Smith, Lee or any other reference. Accordingly, applicants assume that the sole basis for the rejection of Claims 1, 25 and 40 is the Examiner's assertion that these claims are anticipated by Clark as described in paragraph 8 of the office action. For at least the reasons discussed above, Applicants submit that Claims 1, 25 and 40 are not anticipated by Clark.

Claims 5-11, 13-16, 32, 34, 46 and 47 are dependent on Claims 1, 25 or 40. Applicants thus submit that these claims are allowable as dependent on allowable independent claims and request that their rejection be withdrawn.

CONCLUSION

The foregoing is submitted as a full and complete response to the Office Action mailed February 26, 2009.

Applicants assert that the claims are in condition for allowance and respectfully request that the application be passed to issuance. If the Examiner believes that any informalities remain in the case that may be corrected by Examiner's amendment, or that there are any other issues which can be resolved by a telephone interview, a telephone call to the undersigned attorney at (404) 815-6500 is respectfully solicited.

No additional fees are believed due; however the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account Number 11-0855.

Respectfully submitted,

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